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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JACQUELINE GABRIELLA ANGELO,

Defendant and Appellant.

E054798

(Super.Ct.No. RIF083417)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

William J. Capriola, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jacqueline Gabriella Angelo appeals from the trial court's denial of her motion under Penal Code section 1203.4<sup>1</sup> to set aside her 1998 guilty plea and dismiss the complaint, after she pled guilty to illegally taking or driving a vehicle in exchange for three years of probation, which was revoked twice. The People conceded based on the plain wording of the statute. However, after briefing was completed on this case, this Court filed a published opinion on the very same issue, *People v. Johnson* (2012) 211 Cal.App.4th 252 (*Johnson*). In that case we concluded that, based on the legislative intent behind section 1203.4, a defendant who seeks to set aside a guilty plea based on his or her early "discharge" from probation must establish not the mere early termination of probation, but that the probation was terminated because of defendant's good conduct. Because defendant has not established that her probation was terminated because of her good conduct, we affirm the trial court's ruling denying her section 1203.4 motion.

### **FACTS AND PROCEDURE**

On November 25, 1998, defendant pled guilty to unlawfully driving or taking a vehicle (Veh. Code, § 10851). On that date the trial court suspended imposition of the sentence and placed her on formal probation for three years. One of the conditions was that she serve 120 days in custody on weekends.

On April 12, 2000, the trial court summarily revoked defendant's probation and issued a bench warrant. The probation department alleged that defendant never reported for weekend custody or for probation appointments.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

On January 9, 2001, defendant was located and admitted violating her probation. The trial court reinstated probation.

On June 25, 2002, the trial court again summarily revoked defendant's probation and issued a bench warrant. The probation department alleged that defendant had failed to pay \$1,323.15 in victim restitution and fines.

Appellant was not located until March 10, 2010. At that time she admitted violating her probation. The trial court reinstated defendant's probation, then ordered it terminated early and released defendant.

On September 27, 2011, defendant filed a motion to set aside her guilty plea and dismiss the complaint pursuant to section 1203.4. The trial court heard the motion on October 13, 2011. At that time, the court denied the motion on the ground that defendant had not complied with the terms of her probation and still owed \$1,023.15 in fines. This appeal followed.

### **DISCUSSION**

Defendant contends that the trial court erred in denying her motion for relief under section 1203.4, subdivision (a).

Section 1203.4, subdivision (a) provides: "In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, *or has been discharged prior to the termination of the period of probation*, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence

for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty . . . and . . . the court shall thereupon dismiss the accusations or information against the defendant . . . .” (Italics added.)

In this case, the trial court denied defendant’s motion because, “She’s paid a whopping \$300 and still owes \$1,023.15. She didn’t comply with any of the terms of her probation.” The court further explained “So I’m denying it for all those reasons. She didn’t successfully complete it. She never fulfilled the terms. She revoked twice, she had a Term 1 violation, and the fact that the Court just said, heck, we are tired of handling this case, it’s just old, and revoked and terminated, doesn’t fit the code. So the request is denied.”

In *Johnson, supra*, 211 Cal.App.4th 252, this court held that, based on the legislative intent behind section 1203.4, a defendant who seeks to set aside a guilty plea based on his or her early “discharge” from probation must establish not the mere early termination of probation, but that the probation was terminated because of defendant’s good conduct. “If the Legislature had intended to confer the reward of dismissal upon anyone whose period of probation had been terminated early, it could easily have said as much. Instead, the crucial question is ‘why was the probation terminated early.’ [Citation.]” (*Id.* at p. 263) “Relief under Penal Code section 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of the conviction. [Citations.] ““The expunging of the record of conviction is, in essence, a form of legislatively authorized certification of complete

rehabilitation based on a prescribed showing of exemplary conduct during the entire period of probation.’’’ [Citations.]’’ (Id. at p. 260)

Here, defendant has not established that she was “discharged” from probation as that term has been defined in *Johnson*. For this reason, we affirm the trial court’s ruling denying her section 1203.4 motion.

**DISPOSITION**

The trial court’s order denying defendant’s motion under section 1203.4 is affirmed.

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RAMIREZ  
P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.